

PUBLIC MEETING MINUTES

April 9, 2015

PUBLIC EMPLOYMENT RELATIONS BOARD
1031 18th Street
Sacramento, CA 95811

Chair Martinez called the meeting to order at 10:00 a.m.

Members Present

Anita I. Martinez, Chair
A. Eugene Huguenin, Member
Priscilla S. Winslow, Member
Eric R. Banks, Member
Mark C. Gregersen, Member

Staff Present

J. Felix De La Torre, General Counsel
Shawn Cloughesy, Chief Administrative Law Judge
Mary Ann Aguayo, Chief Administrative Officer
Loretta van der Pol, Division Chief, State Mediation & Conciliation Service (Excused)

Call to Order

After establishing that a quorum had been reached, Chair Martinez called the meeting to order for a return to the open session of the February 12, 2015, Public Meeting. She reported that the Board met in continuous closed session to deliberate the pending cases on the Board's docket, pending requests for injunctive relief, pending litigation and personnel matters, as appropriate.

Chair Martinez read into the record the decisions that issued since the open session in February. Those were PERB Decision Nos. 2411, 2412-M, 2413-M, 2414-M, 2415, 2416-H, 2417-S, and 2418-M. The following Requests for Injunctive Relief (IR Request) were filed: No. 679 (*Claudia Ramirez/Juana Gamez v. San Bernardino Public Employees Association*), the request was denied; and No. 680 (*Orange County Employees Association v. County of Orange*), the request was denied. Chair Martinez announced that a document containing a listing of the aforementioned decisions was available at the meeting and that the decisions were available on PERB's website.

Motion: Motion by Member Huguenin and seconded by Member Banks, to close the February 12, 2015, Public Meeting.

Ayes: Martinez, Huguenin, Winslow, Banks, and Gregersen.

Motion Adopted – 5 to 0.

Chair Martinez adjourned the February 12, 2015, Public Meeting. She then opened and called to order the April 9, 2015, Public Meeting.

Minutes

Motion: Motion by Member Banks and seconded by Member Winslow that the Board adopt the minutes for the February 12, 2015, Public Meeting.

Ayes: Martinez, Huguenin, Winslow, Banks, and Gregersen.

Motion Adopted – 5 to 0.

Chair Martinez welcomed PERB's new Board Member Mark C. Gregersen, and his Board Assistant, Blair Gollhur. She also welcomed Felix De La Torre who came on board as General Counsel on March 9.

Comments from Public Participants

None.

Staff Reports

The following staff reports were received with the caveat that any matter requiring action by the Board and not included as an item in today's agenda would be scheduled for consideration at a subsequent meeting.

A. Division of Administration

Ms. Aguayo gave an update on Fi\$Cal, which is a business process data application that would replace the State's fiscal tracking system that has been around since the early 1980's. The new Fi\$Cal system is replacing accounting, and also incorporating budget procurement and other State administrative operations. Four Waves would be rolled out: Wave 1 was in the process of being completed; and Wave 2 was preparing to roll out. PERB is in Wave 4. Wave 2 includes the State Controller's Office and the Department of General Services (DGS). PERB's transactions with those control agencies, as with the Department of Finance (DOF) in Wave 1, will be to bridge over to Fi\$Cal as each agency cycles through its Wave. There is a significant amount of preparation, training and work required to carry out the bridging process alone.

The Division will soon be required to develop business processes for each of its functions in order to establish its operations in Fi\$Cal. At one of the recent informational sessions an example was provided of two small agencies in Wave 1 (State Libraries and Victims Compensation) that reported having spent from 1600 to 3000 hours in order to get through the first 10 months of roll-out. Ms. Aguayo stated that it was important to note that the time reported was above existing staff resources.

Ms. Aguayo then reported that to comply with the Conflict of Interest Code all PERB staff had met the April 1 deadline. In addition, most staff had completed the Ethics Orientation Training which is required every two years.

Budget: PERB had reconciled nine months of the fiscal year. Although PERB's budget is significantly tighter than last fiscal year, it was on track and healthy with a small cushion for expenses not currently projected. Ms. Aguayo stated that purchase requests were being carefully considered and ways also sought to economize. On May 1 PERB would be 100 percent staffed which had not happened for some time; vacancies had been held for a majority of this fiscal year. The Division would be working on a projection for next fiscal year to identify any budget concerns or shortages.

Concepts for Budget Change Proposals (BCPs) to modify the 2016-2017 fiscal year budget were due next week to the Labor Agency. Although the details were confidential, PERB would submit a concept based on deficiencies identified at the March 5 Public Forum. Although DOF had yet to release instructions for the BCPs, they were typically due in September.

PERB conducted a public survey and the period for the public to participate in the survey had closed. It was yet to be determined how the information received would be evaluated and utilized.

Facilities: The build-out for PERB's small office expansion in the Oakland office was 100-percent complete. The Glendale Office had secured a small suite to use as a third hearing room and furniture had been ordered, but not yet received. The building in Glendale had been deemed non-ADA compliant and the Agency needed to find another office space. DOF had not yet approved the documents needed to commence a site search.

Board Members made inquiries regarding points in Ms. Aguayo's report to which she provided answers. Those inquiries included DOF's approval of search for office space in Glendale, PERB's projected budget surplus or lack thereof, the PERB survey, the confidentiality of BCP details, and anticipated staff resources regarding implementation of Fi\$Cal.

B. Office of General Counsel

General Counsel J. Felix De La Torre gave the report for the Office of the General Counsel (GC Office) for the months of February and March 2015. He stated that the monthly activity and litigation reports were distributed to the Board offices for review. He highlighted the activity since the Board's regular Public Meeting on February 12, 2015.

Mr. De La Torre reported that with regard to monthly activities during the past two months (February and March), a total of 154 new cases of all types were filed with the GC Office (up 4 from the prior two-month period—December/January). During February/March, 183 case investigations were completed (down significantly over the prior two-month period where 301 case investigations were completed). The decline was due in large part to a high number

of cases that were completed in December 2014 (approximately 173 cases filed by one individual in a University of California (UC) agency fee matter). Also, the GC Office issued 61 complaints and dismissed 28 charges (compared to 231 complaints issued and 30 dismissals in December/January). Again, the high number of complaints issued was due to the UC cases (approximately 166). Excluding the UC cases, the GC Office had issued approximately 65 complaints in December/January which was consistent with prior months. Mr. De La Torre reported that in February/March (compared to December/January): there was a decline in litigations assignments—7 (22); factfinding decreased by one—6 (7); and representation petitions also decreased—13 (18).

As mentioned by the Chair, since the Public Meeting in April, the GC Office had investigated two requests for injunctive relief: one each in February and March. In the prior two-month period (December/January), there were three requests for injunctive relief.

In terms of court litigation, since the last regular Board meeting in April, five new matters were filed against PERB as follows:

- ***Sonoma County Superior Court v. PERB***, Sacramento County Superior Court Case No. 34-2015-80002035; PERB Decision No. 2409-C [PERB Case No. SF-CE-39-C]. The issue in this case is whether the Board erred in Decision No. 2409-C.
- ***CAL FIRE Local 2881 v. PERB***, Sacramento County Superior Court, Case No. 34-2015-800002020; PERB Decision No. 2317a [PERB Case No. SA-CE-1896-S]. The issue in this case is whether the Board erred in Decision No. 2317a-S.
- ***Wenjiu Liu v. PERB***, Court of Appeal, First Appellate District, Division Four, Case No. A144287; PERB Decision No. 2408-H [PERB Case No. SF-CE-1009-H]. The issue in this case is whether the Board clearly erred in Decision No. 2408-H. [The appeal was summarily dismissed by the court for procedural defects].
- ***Wenjiu Liu v. PERB***, California Supreme Court, Petition for Review, Case No. S225383; Court of Appeal, First Appellate District, Division Four, Case No. A144287; PERB Decision No. 2408-H [PERB Case No. SF-CE-1009-H]. The issue in this case is whether the First District Court of Appeal erred by dismissing Liu's appeal of Board Decision No. 2408-H as untimely and procedurally defective.
- ***County of Tulare v. PERB***, Fifth District Court of Appeal, Case No. F071240; PERB Decision No. 2414-M [PERB Case No. SA-CE-748-M]. The issue in this case is whether PERB erred in Decision No. 2414-M.

As to case determinations since the last regular Board meeting in April, PERB received 1 final court ruling from the California courts in ***Lewis v. PERB***, First District Court of Appeal, Case No. A142856, PERB Case No. SF-CE-808-M.

C. Legislative/Rulemaking

For informational purposes, the GC Office tracks legislation that impacts PERB's mission. Mr. De La Torre reported on three bills of particular interest:

- Assembly Bill 874 (Rendon): This bill would apply the Ralph C. Dills Act to employees of the Judicial Council. Currently they are not under any of the labor relations statutes. The bill does exclude employees of the Supreme Court, Court of Appeal, or the Habeas Corpus Resource Center. Also, the bill prohibits PERB from including Judicial Council employees in a bargaining unit that includes employees other than those of the Judicial Council. The bill is currently in Assembly Public Employees Retirement and Social Security.
- Senate Bill 548 (de León): This bill authorizes family child care providers to form, join, and participate in the activities of provider organizations, and to seek the certification of a provider organization to act as the exclusive representative for family child care providers on matters related to state-funded child care programs pursuant to a petition and election process overseen by PERB or a neutral third party designated by PERB.
- Senate Bill 686 (Pan): This bill provides that the definition of "employee" or "higher education employee" also include a supervisory employee employed as a sworn peace officer by the University of California or the Hastings College of Law. The bill is currently in the Senate Public Employment and Retirement and is set for hearing on April 13.

There was no rulemaking activity.

D. Division of Administrative Law

Chief Administrative Law Judge Shawn Cloughesy reported on the activities in the Division of Administrative Law and stated that the Administrative Law Judge (ALJ) report had been distributed to Board offices for review. Mr. Cloughesy reported that currently cases are being set for formal hearing within three months from the date of informal conference in the Sacramento and Glendale offices (trimmed back from four months), and in the Oakland office cases were being set within four months. He stated that the additional hearing room in Glendale would be a "big plus" for purposes of calendaring hearings and getting the Division's caseload under control in that office.

Mr. Cloughesy continued reporting that as compared to the prior year, the assignment of cases was up significantly, there was a slight decrease of formal hearings completed, and proposed decisions were slightly down. Currently, there were more cases "active" (either set for hearing or pending written decisions)—125, as compared to last year—109. Most of these "active" cases are from the hearing process versus pending written decisions. There is a large group of active cases which are moving through the hearing process and will hit pending written decisions, but so far the Division had seen a decrease in the number of pending written decisions. By the end of this month, for all ALJs combined there will be only 40 cases pending

written decision, a statistic the Division has not seen for 3-4 years due to the increase in formal hearing activity. A further reduction in this number is desired, but that would depend on the group of cases going through the formal hearing process.

The ratio of exceptions to proposed decisions is “considerably growing”—57 percent. In answer to Chair Martinez’s question about the increase, Mr. Cloughesy stated “[w]e are hoping that will eventually go down, but obviously people are wanting to hear what the Board has to say about more issues.” Chair Martinez inquired further whether it was “primarily pro pers” who were filing and Member Winslow also asked about the parties filing exceptions. Mr. Cloughesy stated that it was “really hard to say [and you could not] categorize it by pro pers versus non pro pers.” Getting back to this subject later in the meeting he explained that “It’s almost a guaranteed exception on either side, ... if it’s a ruling on behalf of the charging parties, the employer’s looking at a back pay issue ... or if it’s a ruling on behalf of the employer, charging party [will except]. You are seeing, at least in a lot of those cases, that regardless of who prevails there is certainly reasons for both sides to appeal those matters.”

Member Winslow asked whether 57 percent had been the highest seen by Mr. Cloughesy. He answered that “I went back many many years a couple of years ago and it has been that high before. Since I have been Chief, this is the highest. But, yes, it’s been 55 percent and it has been 60. So, I don’t like to see it that high because if the judges are able to resolve a matter at our level, I view that as a certain amount of success and it is less work that trickles to the Board level.”

E. State Mediation and Conciliation Service

In Division Chief Loretta van der Pol’s absence, Conciliator Kenneth Glenn gave the report for the State Mediation and Conciliation Service (SMCS), and stated that SMCS’s report for February and March 2015 had been distributed to Board offices for review. Mr. Glenn reported the following:

- February 2015—SMCS opened 61 cases, closed 55 and have 138 active cases (compared to February 2014, 79 opened and 84 closed); there were 108 active cases going into March. Mediators took a total of eleven days of paid leave, and there was one holiday.
- March 2015—SMCS opened 51 cases, closed 85, and have 115 active cases (compared to March 2014, SMCS opened 73 cases, closed 72), and had 112 active cases going into April. Mediators took approximately fourteen days of paid leave, and there was one holiday.
- For representation and elections work in February, SMCS had 15 active cases, 5 of which were resolved in that month. Eight of the cases were for decertification/representation elections, 3 were for Agency Shop elections, 1 was a unit modification issue that had not yet reached a decision to conduct an election, and 3 were for representation matters (1 election and 2 card checks). The resolutions for the 5 completed cases were as follows:

- i Decertification/representation — 1 “Incumbent Organization Successful,” and 1 “Challenging Organization Successful”
 - i Agency Shop — 1 “Union Established Majority”
 - i Representation (card checks) — 2 “Union Established Majority”
- For representation and elections work in March 2015, SMCS had 16 active cases, 6 of which were resolved in that month. Nine of the cases were for decertification/representation matters, 5 were for Agency Shop elections and a card check, 1 was a unit modification issue that continued to be uncertain on a decision to conduct an election, and 1 was for a representation election. The resolutions for the 6 completed cases were as follows:
 - Decertification/representation – 2 “Challenging Organization Successful” and 1 SMCS withdrew services on contested jurisdiction.
 - Agency Shop – 3 “Union Established Majority.”

Personnel Administration: Two new Conciliators were expected to join SMCS on May 1, 2015: Gerald (Gerry) Adams, would primarily be assigned work in Southern California; and Jun Payoyo, would primarily be assigned in the Central California region, along with Joe Rios. Mr. Adams and Mr. Payoyo would be introduced to the Board at the June 11, 2015 meeting. The SMCS spring staff meeting would be conducted in Sacramento on June 10, 2015, to minimize travel costs for those needing to stay for the June 11 Board meeting.

General Administration: SMCS received \$4,417.50 and \$2,785.00 for chargeable work and for lists of arbitrators, for the months of February and March, respectively.

The updated 2015 CPER Guide, “Public Guide to Public Sector Mediation in California,” is now available for interested parties to order from the University of California at Berkeley, Institute for Research on Labor and Employment. The guide is authored by SMCS Presiding Conciliator Gerald (Jerry) Fecher. Copies were provided to Board Members and Executive Managers.

Division Chief Loretta van der Pol will be participating on a panel for one day at the LEERA Annual Meeting in Pittsburgh, Pennsylvania, on May 28, 2015. The subject of the panel presentation and its subsequent workshop is “Labor-Management Training: Raising the Bar through Collaboration.”

Motion: Motion by Member Huguenin and seconded by Member Banks that the Division of Administration, Office of the General Counsel, Legislative/Rulemaking, Division of Administrative Law, and SMCS reports be accepted and filed.

Ayes: Martinez, Huguenin, Winslow, Banks, and Gregersen.

Motion Adopted – 5 to 0.

Old Business

None.

New Business

The Board considered three policies and descriptions regarding each were given by Ms. Aguayo.

- 04 – IT Security & Acceptable Usage. Replaced a policy used by PERB. The policy references State requirements, PERB's policy and provides more details about various other IT components which previously had not been thoroughly addressed.
- 05 – Remove Electronic Data Access. The VPN set up for PERB employees to log-in and work remotely with WiFi. This policy comes with many security risks and is mandated. Separately, there is a certification for employee signature which sets out the requirements for this policy.
- 06 – Bring Your Own Device. Other than for SMCS mediators, PERB does not issue cell phones. In the past, PERB had allowed employees to work on their own computers. This policy sets out the definitions to protect PERB and also protects the user on their devices. There are many cases currently in court regarding the issues covered in this policy, therefore, if adopted today, it is assumed that this particular policy would be revisited within the next couple of years.

There was discussion regarding the above policies including review by PERB managers, future review of the policies on an annual basis, and the security risks and staff flexibility or usage of social media sites (Twitter, Facebook, Instagram, etc.) while on the PERB network during work and non-work hours.

Motion: Motion by Member Huguenin and seconded by Member Banks that the: 04-IT Security & Acceptable Usage Policy; 05-Remote Electronic Data Access/Certification of Compliance for Remote Access Policy; and 06-Bring Your Own Personal Device Policy, be adopted and filed.

Ayes: Martinez, Huguenin, Winslow, Banks, and Gregersen.

Motion Adopted – 5 to 0.

General Discussion

Chair Martinez announced that there being no further business, it would be appropriate to recess the meeting to continuous closed session and that the Board would meet in continuous closed session each business day beginning immediately upon the recess of the open portion of this meeting through June 11, 2015, when the Board will reconvene in Room 103, Headquarters Office of the Public Employment Relations Board. The purpose of these

closed sessions will be to deliberate on cases listed on the Board's Docket (Gov. Code, sec. 11126(c)(3)), personnel (Gov. Code, sec. 11126(a)), pending litigation (Gov. Code, sec. 11126(e)(1)), and any pending requests for injunctive relief (Gov. Code, sec. 11126(e)(2)(c)).

Motion: Motion by Member Gregersen and seconded by Member Winslow to recess the meeting to continuous closed session.

Ayes: Martinez, Huguenin, Winslow, Banks, and Gregersen.

Motion Adopted – 5 to 0.

Respectfully submitted,

Regina Keith, Administrative Assistant

APPROVED AT THE PUBLIC MEETING OF:

Anita I. Martinez, Chair